REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

LINDE PHILIPPINES, INC. (formerly, CONSOLIDATED INDUSTRIAL GASES, INC.), Petitioner,	CTA CASE NO. 8783
	Members:
	FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	MAR 28 2019 8:46 a.m.

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DECISION

***Fabon-Victorino, J.*:**

In this Petition for Review[1] filed on March 13, 2014, petitioner Linde Philippines, Inc. (formerly Consolidated Industrial Gases, Inc.), seeks to set aside the Final Decision on Disputed Assessment (FDDA)[2] finding it liable for deficiency final withholding tax (FWT) and value-added tax (VAT) in the aggregate amount of ₱62,363,178.19, including interest and compromise penalties for fiscal year (FY) ended September 30, 2007, and the refund or issuance of tax credit certificate (TCC) of the amount of ₱62,363,180.09, allegedly representing erroneously and illegally collected deficiency FWT and VAT, including interest and compromise penalties for the same FY ended September 30, 2007.

[1] Docket, vol. 1, pp. 14-64.
[2] Exhibit "P-27", docket, vol. 1, pp. 625-631; Exhibit "R-9", BIR Records, pp. 587-593.

Petitioner is a domestic corporation, with principal office at 30th Floor, Wynsum Corporate Plaza, 22 Emerald Avenue, Ortigas Center, Pasig City.[3]

Petitioner was primarily organized to engage in the manufacture, production, purchase, importation, sale and trade at wholesale of all kinds of liquids and gases and special gases and other chemicals, including but not limited to oxygen, hydrogen, acetylene, nitrogen, argon, carbon dioxide, carboxen, nitrous oxide, compressed air, helium and other allied or related products, including welding equipment, containers and other receptacles and to lease, operate and/or manage, construct and to install for the account of others, plants, equipment and machineries for the manufacture or production of the desired liquids and gases and other billed products including pipeline systems and related equipment.[4]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On December 17, 2008, respondent issued Letter of Authority (LOA) No. 200800010431[5], authorizing Revenue Officer (RO) Charlie C. De Leon and Group Supervisor (GS) Alfredo M. Santos of Revenue District Office (RDO) No. 43-Pasig City to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for FY ended September 30, 2007.

On July 9, 2009, respondent, through the OIC-Chief of Large Taxpayers Audit and Investigation I, Conrado C. Lee, issued Memorandum Referral No. D-LOA-61-07-09[6] assigning the case to RO Melinda Lim and GS Theodore

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[3] Exhibit "P-2", docket, vol. 2, p. 812; Par. 1.01, Joint Stipulation of Facts and Issues (JSFI), docket, vol. 1, p. 664.
[4] Exhibit "P-2", docket, vol. 2, p. 810; Par. 1.02, JSFI, docket, vol. 1, pp. 664-665.
[5] Exhibit "P-3", docket, vol. 1, p. 420; Exhibit "R-1", BIR Records, p. 49.
[6] Exhibit "R-2", BIR Records, p. 47.

Maroket for the continuance of audit previously handled by RDO No. 43-Pasig City for FY covering October 1, 2006 to September 30, 2007 pursuant to LOA No. 200800010431.

On October 27, 2011, respondent issued a Notice of Informal Conference[7] inviting petitioner for a conference and to submit documentary evidence in support of its objections against the proposed assessment.

On December 7, 2011, petitioner received the Preliminary Assessment Notice (PAN) with Details of Discrepancy[8] dated November 29, 2011 issued by respondent through OIC-Assistant Commissioner of Large Taxpayers Service (LTS), Alfredo V. Misajon, assessing it for deficiency FWT in the amount of ₱41,725,001.58 and deficiency VAT in the amount of ₱18,016,798.50 or a total amount of ₱59,741,800.08, inclusive of penalties and interests for FY ended September 30, 2007.[9]

In a Letter[10] dated January 30, 2012, petitioner requested respondent that it be allowed to pay the assessed deficiency taxes in six (6) installments to avoid further interest should it be finally determined liable thereto. Petitioner also emphasized in the same letter that the payment of the alleged deficiency taxes was under protest with reservation to challenge the said assessment before the proper Court. In a Letter[11] dated February 1, 2012, respondent granted petitioner's request to pay the deficiency taxes in installments but only for a period of four (4) months commencing February 15, 2012.

Petitioner however failed to make installment payment on February 15, 2012. Thus, on March 12, 2012, petitioner received a Final Assessment Notice (FAN) with Details of Discrepancies[12] dated March 2, 2012 issued by OIC-Assistant Commissioner of Large Taxpayers Service, Alfredo V. Misajon, assessing petitioner for deficiency FWT in the amount of ₱42,651,294.36 and deficiency VAT of

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[7] Exhibit "R-3, BIR Records, p. 355.
[8] Exhibit "P-4", docket, vol. 1, pp. 422-424.
[9] Par. 1.06, JSFI, docket, vol. 1, p. 665.
[10] Exhibit "P-17", docket, vol. 1, p. 548.
[11] Exhibit "P-18", docket, vol. 1, pp. 552-553; Exhibit "R-5", BIR Records, pp. 440-441.
[12] Exhibit "P-19", docket, vol. 1, pp. 554-560; Exhibit "R-8", BIR Records, pp. 482-490.

₱18,471,586.43 or in the aggregate amount of ₱61,122,880.79 for FY ended September 30, 2007.[13] On March 30, 2012, petitioner protested[14] the FAN.

On April 2, 2012, June 28, 2012, June 29, 2012, and July 31, 2012, petitioner paid in installments[15] its FWT and VAT in the total amount of ₱56,856,400.50.[16] On July 31, 2013, it also paid the sum of ₱5,506,777.69[17], allegedly representing deficiency FWT and VAT surcharge, interest, and compromise penalties for FY ended September 30, 2007.

On November 4, 2013, petitioner filed an administrative claim for refund/TCC of erroneously and illegally collected FWT and VAT in the amount ₱56,856,400.40 for FY ended September 30, 2007.[18] On March 12, 2014, petitioner filed a Supplemental Claim for Tax Refund/TCC[19] increasing its claim from ₱56,856,400.40 to ₱62,363,180.09.

On February 11, 2014, petitioner received the challenged FDDA with Details of Discrepancies denying its protest, as well as its claim for refund/TCC of erroneously and illegally collected FWT and VAT for FY ended September 30 2007.[20]

On March 13, 2014, petitioner filed the present Petition for Review with this Court to which respondent filed his Answer[21] through registered mail on June 6, 2014 and received by the Court on June 11, 2014. Respondent argued that no error or illegality could be ascribed to the subject assessment for deficiency final withholding tax liability as it was issued in accordance with law, jurisprudence and existing administrative rules and regulations.

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[13] Par. 1.10, JSFI, docket, vol. 1, p. 666.
[14] Exhibit "P-20", docket, vol. 1, pp. 561-568.
[15] Exhibit "P-25", docket, vol. 2, pp. 876-877.
[16] Exhibits "P-21" and "P-22", docket, vol. 1, pp. 574-587.
[17] Exhibits "P-23" and "P-24", docket, vol. 2, pp. 869-875.
[18] Exhibit "P-26", docket, vol. 2, pp. 878-908.
[19] Exhibit "P-28", docket, vol. 1, pp. 632-635.
[20] Pars. 1.12 and 1.113, JSFI, docket, vol. 1, pp. 666-667.
[21] Docket, vol. 1, pp. 321-329.

Further, petitioner failed to file a Tax Treaty Relief Application (TTRA) with the International Tax Affairs Division (ITAD) of the BIR and to secure a ruling thereon as required under RMO 01-2000 preventing it from availing the preferential tax rate of fifteen percent (15%) under the Philippines-Australia or Philippines-Singapore Tax Treaties, hence, the assessment based on the regular tax rate of thirty-five percent (35%) as provided under the NIRC, as amended.

Respondent further stated that the assessment for VAT on petitioner's sales of real properties was correct as the real properties it sold were deemed ordinary assets and not capital assets contrary to its claim, hence the imposition of VAT instead of capital gains tax.

The circumstances of the said sale of real properties indicate that these were ordinary assets. Respondent pointed out that Grandplains Properties, Inc., the vendee of the properties, sold by petitioner was its subsidiary in which it controlled forty percent (40%) of its equity. Respondent found it contrary to the nature of capital assets that they were kept by petitioner for a period of time, and later sold it to its subsidiary on condition that the same set of properties be immediately leased to it for twenty-five (25) years. The foregoing circumstances clearly indicate that the sales transactions entered into by petitioner with respect to these properties were not casual, and that the very properties themselves are not capital assets, but are being used by petitioner in the ordinary course of its business.

Respondent also noted that the subject properties were used by petitioner as previous owner, then as a lessee, in the ordinary course of its business making the said properties ordinary assets and rendering petitioner liable for VAT on the transactions covering the sale of the said properties.

Finally, the assessment issued in this case enjoys the presumption of correctness, thus petitioner must prove the contrary.

Petitioner filed its Reply (To Answer dated 6 June 2014)[22] through registered mail on June 25, 2014 and received by the Court on July 2, 2014.

The parties filed their Joint Stipulation of Facts and Issues[23] on October 14, 2014, thereafter, the Court issued the Pre-Trial Order[24] on November 25, 2014.

Petitioner presented as its witnesses Aurora R. Silvestre[25], Elizabeth J. Ormilon[26], and Ruben V. Tagapan.[27]

Petitioner's Corporate Secretary **Aurora R. Silvestre** testified[28] that she was petitioner's Accounting and Reporting Manager in the years 2006 to 2008. As such, she managed all operational matters in the area of accounting, including compliance with tax laws and dealing with the BIR.

Petitioner is mainly in the manufacture and sale of all kinds of liquids and gases used for various industries.

The instant case stemmed from the Letter of Authority No. 00010431 dated December 7, 2008 issued by the BIR and received by petitioner on January 13, 2009, authorizing the audit of petitioner's books and accounting records for FY ended September 30, 2007. A PAN dated November 29, 2011 was subsequently issued assessing petitioner for deficiency FWT and VAT for the same FY.

The PAN pertained to petitioner's alleged deficiency FWT of 35% of the payments made to BOC Gases Australia as technical fees, and to BOC Gases Pte Ltd. as management fees, for rendering technical and management services, respectively, to petitioner. For these payments, petitioner withheld 15% FWT pursuant to the Philippines-Australia and Philippines-Singapore Tax Treaties. Respondent however erroneously assessed FWT on the said payments at the

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[22] Docket, vol. 1, pp. 348-354.
[23] Docket, vol. 1, pp. 664-677.
[24] Docket, vol. 1, pp. 711-719.
[25] Minutes of the hearing dated January 29, 2015, docket, vol. 2, p. 722.
[26] Minutes of the hearing dated March 3, 2015, docket, vol. 2, p. 747.
[27] Minutes of the hearing dated August 1, 2016, docket, vol. 2, p. 981.
[28] Judicial Affidavit dated July 25, 2014, docket, vol. 1, pp. 381-400; with cross and redirect examination.

regular rate of 35% as petitioner allegedly did not file a tax treaty relief application with the BIR prior to availing of the preferential rate of tax of 15%.

Petitioner was likewise assessed deficiency VAT on payments received in 2007 for the sale of its real properties to Grandplains Properties Inc. Petitioner considered the said properties sold as capital assets, as they were not used by petitioner in its business, and paid Capital Gains Tax for the said sale, and for which petitioner issued Official Receipts but Grandplains Properties Inc. did not recognize any input VAT from the said sale. This notwithstanding, the BIR still assessed deficiency VAT on said transaction since it deemed the real properties sold as ordinary assets rather than as capital assets.

To halt escalation of interest, petitioner requested respondent that it be allowed to pay the amount assessed in the PAN in installments, which request was granted. However, petitioner failed to comply with its undertaking prompting the BIR to issue the FAN dated March 2, 2012 assessing petitioner for deficiency FWT and VAT for the fiscal year ending September 30, 2007.

Petitioner protested the FAN through a Letter dated March 30, 2012. To stop the accumulation of interest, and in the mistaken belief that payment prior to protest was required, petitioner, on April 2, 2012, June 28, 2012, June 29, 2012, and on July 31, 2012, paid the total amount of ₱56,856,400.50 representing partial payments for the deficiency taxes assessed.

On July 31, 2013, petitioner paid the amount of ₱5,506,777.69 as further partial payment of the assessment for a total sum of ₱62,363,180.09.

Subsequently, on November 4, 2013, petitioner filed an administrative claim for refund of the amount it paid which was denied in the assailed FDDA received by petitioner on February 11, 2014. The FDDA upheld the assessment for deficiency FWT and VAT in the total amount of ₱62,363,178.19.

On March 12, 2014, petitioner filed a Supplemental Administrative Claim for Refund/TCC dated March 11, 2014.

Witness **Elizabeth J. Ormilon**,[29] testified that she is currently petitioner's General Accounting and Compliance Manager. She is tasked to oversee the operations of the company pertaining to treasury, taxation, and general accounting, including preparation of financial statements and compliance with the reportorial requirements of the BIR and other government agencies.

The instant case was filed to dispute the assessment against petitioner for deficiency FWT and VAT for FY ended September 2007 in the amount of ₱62,363,178.19.

The witness mainly corroborated the testimony of the first witness with regard the issuance of the subject assessment as a result of the Letter of Authority No. 00010431 dated December 7, 2008 authorizing the tax audit against petitioner, PAN dated November 29, 2011, FAN dated March 2, 2012, and FDDA against petitioner as well as petitioner's filing of its administrative claim for refund after receipt of the FDDA on February 11, 2014 and its Supplemental on March 12, 2014. Although petitioner filed a protest against the FAN, it nonetheless paid the BIR the total amount of ₱62,363,180.09 to avoid the accumulation of interest and in the belief that payment under protest is required.

She also mirrored the explanation of the first witness on respondent's erroneous assessment for deficiency FWT at the regular rate of 35% on payments of technical/management fees when petitioner already withheld and remitted to the BIR 15% FWT on the said payments. Respondent ruled that petitioner was not entitled to the 15% preferential rate for it did not file an application for tax treaty relief with the BIR prior to availing of the tax benefit.

She likewise expressed disagreement with the deficiency VAT assessment on payments received by

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[29] Judicial Affidavit dated February 26, 2015, docket, vol. 2, pp. 728-746; no cross examination.

petitioner from its sale of real properties to Grandplains Properties Inc. in 2007. The lands sold were idle and without any improvement and should be deemed as capital assets given that petitioner is engaged in the manufacture and sale of liquids and gases, and not in the real estate business. For the said transaction, petitioner paid capital gains tax. Further, that petitioner issued official receipts for the payments received and the buyer did not recognize any input tax from said sale, negating the need to assess petitioner with deficiency VAT thereon.

Petitioner's third witness, **Ruben V. Tagapan** from the BIR, merely submitted to the Court the certified true copies of certain documents, as requested by petitioner.

After its formal offer of evidence, petitioner rested its case.

For his defense, respondent presented his sole witness, Revenue Officer IV **Melinda G. Lim**[30] of the BIR Regular Large Taxpayers Audit Division III. She testified[31] that she continued the audit of petitioner by virtue of the Memorandum No. D-LOA-61-07-09 dated July 9, 2009, in relation to LOA No. 2008-00010431 dated December 17, 2017. Thereafter, a Notice of Informal Conference dated October 27, 2011 was served on petitioner. After the audit, petitioner was found liable for deficiency FWT and VAT in the amount of ₱59,741,808.08, consequently, a PAN dated November 29, 2011 was issued. Petitioner requested that it be allowed to pay the assessment in the PAN on installments, which request was granted by the BIR, but only in four (4) monthly installments.

Despite agreement on the payment of the assessed amount, petitioner filed a protest against the PAN on December 20, 2011. The protest was found to be without merit, hence, a FAN was issued on March 2, 2012 to which petitioner also filed a protest on March 30, 2012. The FDDA was later issued and received by petitioner on February 11, 2014.

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[30] Minutes of the hearing dated June 27, 2017, docket, vol. 2, p. 1029.
[31] Judicial Affidavit dated June 22, 2017, docket, vol. 2, pp. 1020-1028; with cross examination.

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[30] Minutes of the hearing dated June 27, 2017, docket, vol. 2, p. 1029.
[31] Judicial Affidavit dated June 22, 2017, docket, vol. 2, pp. 1020-1028; with cross examination.

The witness further declared that petitioner was liable for deficiency FWT under the regular 35% rate since it was not able to file a tax treaty relief application with the BIR prior to availing of the 15% treaty preferential rate. Petitioner was likewise liable for VAT since it issued VAT invoices/official receipts for payments it received.

On July 14, 2017, respondent filed Formal Offer of Evidence[32] and rested per Court Resolution[33] dated February 5, 2018.

The case was submitted for decision on April 23, 2018.[34]

STATEMENT OF THE ISSUES

The parties submitted the following issues for resolution:[35]

1. Whether petitioner is liable for the amount of ₱62,363,180.09 as deficiency FWT and VAT for FY ending September 2007 plus 25% surcharge as well as 20% deficiency and delinquency interest for late payment until fully paid.

2. Whether petitioner is entitled to its claim for refund in the total amount of ₱62,363,180.09 representing FWT and VAT for FY ending September 2007.

3. Granting without admitting that petitioner is liable for the aforementioned deficiency FWT, whether or not petitioner should be required to pay only for payments made to BOC-Australia and BOC-Ltd the balance of 20% of the FWT due because petitioner had withheld and remitted to the BIR fifteen percent (15%) of the technical aid and management fees paid to

[32] Docket, vol. 2, pp. 1037-1043.
[33] Docket, vol. 2, pp. 1121-1122.
[34] Resolution dated April 23, 2018, docket, vol. 2, p. 1195.
[35] JSFI, docket, vol. 1, p. 667.

BOC-Australia and BOC-Ltd based on the RP-Australia and RP-Singapore Tax Treaties.

DISCUSSION/RULING

Before delving on the stipulated issues, the Court shall first determine the timeliness of the filing of the present petition pursuant to Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended, quoted hereunder for ready reference:

> SEC. 228. *Protesting of Assessment*. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Thus, a taxpayer has thirty (30) days from receipt of the FAN within which to file its administrative protest. It also has sixty (60) days from the filing of the administrative protest to submit all relevant supporting documents. Thereafter, the taxpayer has another 30 days from receipt of Commissioner's adverse decision, or in case of his inaction, from the lapse of 180-day period from submission of documents within which to file a Petition for Review with the Court of Tax Appeals (CTA).

In this case, petitioner received the FAN with Details of Discrepancies on March 12, 2012, assessing petitioner for deficiency FWT and VAT in the aggregate amount of ₱61,122,880.79 for FY ended September 30, 2007. Petitioner had 30 days from receipt of the FAN on March 12, 2012 or until April 11, 2012, within which to file its administrative protest. Hence, petitioner timely filed its Protest Letter to the FAN on March 30, 2012.

On February 11, 2014, petitioner received the FDDA with Details of Discrepancies, which denied petitioner's protest as well as its claim for refund/TCC of erroneously and illegally collected FWT and VAT for FY ended September 30, 2007. Consequently, from receipt of the FDDA on February 11, 2014, petitioner had 30 days or until March 13, 2014 within which to file its Petition for Review with the Court. Therefore, the Petition for Review was filed within the 30-day reglementary on March 13, 2014.

On the merit of the case.

The main issue in this case is the validity of the subject assessment upon which the grant of refund is dependent. Relevant thereto is the authority of the BIR examining officers whose audit resulted in the issuance of the assailed assessment.

While the issue of the authority of the Revenue Officers to conduct the audit or investigation of petitioner was not raised as an issue by the parties, note that the Court is not bound by the issues specifically raised by the parties and it can rule on matters related to the issues raised and/or necessarily in the proper determination of the case. The Supreme Court said it best in the following manner:

> From the foregoing, it is clear that the issue on whether the revenue officers who had conducted the examination on Lancaster exceeded their authority pursuant to LOA No. 00012289 may be considered as covered by the terms "other matters" under Section 7 of R.A. No. 1125 or its amendment, R.A. No. 9282. The authority to make an examination or assessment, being a matter provided for by the NIRC, is well within the exclusive and appellate jurisdiction of the CTA.
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> x x x x x x x x x
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> Under Section 1, Rule 14 of A.M. No. 05-11-07-CTA, or the Revised Rules of the Court of Tax Appeals, **the CTA is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.**
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> x x x x x x
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> The above section is clearly worded. On the basis thereof, the CTA Division was, therefore, well within its authority to consider in its decision the question on the scope of authority of the revenue officers who were named in the LOA even

> though the parties had not raised the same in their pleadings or memoranda.[36]

Pertinently, Section 6(A) of the NIRC of 1997, as amended, grants respondent Commissioner of Internal Revenue the power to authorize the examination of any taxpayer and the assessment of the correct amount of tax due, to wit:

> SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* -
>
> (A) *Examination of Returns and Determination of Tax Due.* - After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer." (*Emphasis supplied*)

In relation thereto, Section 13 of the NIRC of 1997, as amended, provides that a Letter of Authority is the authority given to the appropriate revenue officer assigned to perform assessment functions, to wit:

> SEC. 13. *Authority of a Revenue Officer.* - Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, **a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to**

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[36] Commissioner of Internal Revenue vs. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017.

> **recommend the assessment of any deficiency tax due** in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis supplied*)

Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Moreover, the revenue officer so authorized must not go beyond the authority given. In the absence of such an authority, the assessment or examination is a nullity.[37]

The record shows that LOA No. 200800010431[38] dated December 17, 2008 issued by Regional Director Alfredo V. Misajon authorized RO Charlie C. De Leon and GS Alfredo M. Santos to examine the books of accounts and other accounting records of petitioner for all internal revenue taxes for the period from October 1, 2006 to September 30, 2007.

ROs Melinda G. Lim, Nimfa P. Saga and GS Edison O. Larin, who conducted the audit and recommended the issuance of the PAN and subsequently, the FAN against petitioner for FY 2007[39], were not named in LOA No. 200800010431.

Not having the authority to conduct audit of petitioner through a valid LOA, the resulting assessment in the PAN and FAN, are deemed void.

The Supreme Court emphasized the significance of a properly issued LOA to the validity of an assessment, thus:

> An LOA is the authority given to the appropriate revenue officer assigned to perform assessment functions. It empowers or enables said revenue officer to examine the books of account and other accounting records of a taxpayer for the purpose of collecting the correct

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[37] Commissioner of Internal Revenue vs. Sony Philippines, Inc., G.R. No. 178697, November 17, 2010.
[38] Exhibit "R-1", BIR Records, p. 49.
[39] Exhibit "R-4", BIR Records, pp. 360-390; Exhibit "R-7", BIR Records, pp. 443-479.

amount of tax. An LOA is premised on the fact that the examination of a taxpayer who has already filed his tax returns is a power that statutorily belongs only to the CIR himself or his duly authorized representatives. Section 6 of the NIRC clearly provides as follows:

> **SEC. 6**. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
>
> (A) **Examination of Return and Determination of Tax Due**. – After a return has been filed as required under the provisions of this Code, **<u>the Commissioner or his duly authorized representative</u> may authorize the examination of any taxpayer** and the assessment of the correct amount of tax: Provided, however, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.
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> x x x x (Emphasis and underlining ours)

Based on the afore-quoted provision, it is clear that unless authorized by the CIR himself or by his duly authorized representative, through an LOA, an examination of the taxpayer cannot ordinarily be undertaken. x x x **Hence, unless undertaken by the CIR himself or his duly authorized representatives, other tax agents may not validly conduct any of these kinds of examinations without prior authority.**

xxx xxx xxx

In the case of *Commissioner of Internal Revenue v. Sony Philippines, Inc.*, the Court said that:

> Clearly, there must be a grant of authority before any revenue officer can conduct an examination or assessment. Equally important is that the revenue officer so authorized must not go beyond the authority given. **In the absence of such an authority, the assessment or examination is a nullity**. (Emphasis and underlining ours)
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> xxx xxx xxx
>
> Contrary to the ruling of the CTA *en banc*, an LOA cannot be dispensed with just because none of the financial books or records being physically kept by MEDICARD was examined. **To begin with, Section 6 of the NIRC requires an authority from the CIR or from his duly authorized representatives before an examination 'of a taxpayer' may be made. The requirement of authorization is therefore not dependent on whether the taxpayer may be required to physically open his books and financial records but only on whether a taxpayer is being subject to examination.**
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> xxx xxx xxx
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> x x x **What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is inescapably void.** [40] *(Emphasis supplied)*

It bears stressing that the authority of BIR examiners to conduct audit investigation goes into the validity of an assessment; thus, any assessment arising from the conduct

[40] Medicard Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 222743, April 5, 2017.

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of audit examination of a taxpayer's books of accounts by a BIR examiner who is not duly authorized to do so is a complete nullity. A void assessment bears no valid fruit.[41]

But will the Memorandum Referral No. D-LOA-61-07-09[42] dated July 9, 2009, issued by Conrado C. Lee, OIC-Chief of LT Audit and Investigation Division I, constitute a valid authority to conduct the audit on petitioner instead of a LOA? The said Memorandum Referral No. D-LOA-61-07-09 authorized RO Melinda G. Lim and GS Theodore Maroket to continue the audit/investigation of petitioner for FY covering October 1, 2006 to September 30, 2007 which resulted in the assessment as contained in the PAN and FAN.

The answer is in the negative.

Section C (1) and (5) of RMO No. 43-90[43] highlights the importance of an LOA and explicitly requires the issuance of a new LOA in cases of re-assignment/transfer of cases to another RO, as follows:

> C. Other policies for issuance of L/As.
>
> 1. **All audits/investigations, whether field audit or office audit, should be conducted under a Letter of Authority**.
>
> 2. The duplicate of each internal revenue tax which is specifically indicated in the L/A shall be attached thereto, unless a return is not required under the Tax Code to be filed therefor or when the taxpayer has not filed a return or the Assessment Branch has certified that no return is on file therein or the same cannot be located.
>
> 3. A Letter of Authority should cover a taxable period not exceeding one taxable year.

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[41] Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation and Liquigaz Philippines Corporation, vs. Commissioner of Internal Revenue, G.R. No. 215534 and G.R. No. 215557, respectively, April 18, 2016.
[42] Exhibit "R-2", BIR Records, p. 47.
[43] Amendment of Revenue Memorandum Order No. 37-90 Prescribing Revised Policy Guidelines for Examination of Returns and Issuance of Letters of Authority to Audit.

> The practice of issuing L/As covering audit of 'unverified prior years' is hereby prohibited. If the audit of a taxpayer shall include more than one taxable period, the other periods or years shall be specifically indicated in the L/A.
>
> xxx xxx xxx
>
> 5. **Any re-assignment/transfer of cases to another RO(s), and revalidation of L/As which have already expired, shall require the issuance of a new L/A, with the corresponding notation thereto, including the previous L/A number and date of issue of said L/As**." (*Emphasis supplied*)

Per the foregoing provision, a revenue officer must be clothed with authority before proceeding with an examination or assessment. Moreover, that authority must be in a form of an LOA, and not a mere Memorandum Referral, as obtaining in the present case.

The record shows that the subject assessment emanated from Memorandum Referral No. D-LOA-61-07-09 dated July 9, 2009 authorizing RO Melinda G. Lim and GS Theodore Maroket to continue the audit/investigation of petitioner for FY ended September 30, 2007, instead of a valid LOA. This was confirmed and testified to by respondent's witness RO Melinda G. Lim[44], as follows:

> 11Q You mentioned that you conducted the audit/investigation of petitioner for the taxable year 2007, what is your authority to conduct the investigation of petitioner?
>
> 11A I was authorized under a Memorandum No. D-LOA-61-07-09 dated 9 July 2009 to continue the audit/investigation of petitioner's accounting records for taxable year 2007 issued in relation to Letter of

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[44] Exhibit "R-10", docket, vol. 2, p. 1021.

Authority No. 2008-00010431 dated December 17, 2008."

As a result of such unauthorized tax examination, ROs Melinda G. Lim, Nimfa P. Saga and GS Edison O. Larin recommended the issuance of a PAN and subsequently, a FAN against petitioner for FY 2007.[45]

Verily, the examining ROs relied upon the Memorandum No. D-LOA-61-07-09 dated July 9, 2009 for their authority to conduct the audit and investigation of petitioner in violation of the rules and established jurisprudence.

The audit process normally commences with the issuance by the CIR of an LOA. The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated RO to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[46]

Without a validly issued LOA, the resulting assessment or examination conducted is a nullity.

Considering that ROs Melinda G. Lim, Nimfa P. Saga and GS Edison O. Larin were not authorized by a valid LOA, the subject deficiency tax assessments, which resulted from the examination of the said BIR officials, are deemed null and void.

As to petitioner's claim for refund, Sections 204(C) and 229 pertinently provides:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

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[45] Exhibit "R-4", BIR Records, pp. 360-390; Exhibit "R-7", BIR Records, pp. 443-479.
[46] Commissioner of Internal Revenue vs. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017.

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*

SEC. 229. *Recovery of Tax Erroneously or Illegally Collected*. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. *(Emphasis supplied)*

To be entitled to a refund of erroneously or illegally collected tax, the following requisites must be satisfied:[47]

1. That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

2. That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. That the suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

Evidence show that on the following dates, petitioner paid under protest the BIR the aggregate amount of ₱62,363,178.19 representing its total installment payments for the deficiency FWT and VAT assessments issued against it for FY ended September 30, 2007, detailed as follows:[48]

Date of Payment	**FWT**	**VAT**		**Total Amount Paid**
4/2/2012	₱ 14,029,279.03			₱ 14,029,279.03
6/28/2012		₱ 4,659,362.57		4,659,362.57
6/28/2012		4,700,828.52		4,700,828.52
6/29/2012	9,491,776.53			9,491,776.53
6/29/2012	9,576,232.63			9,576,232.63
7/31/2012	9,657,964.35			9,657,964.35
7/31/2012		4,740,956.87		4,740,956.87
Subtotal	*₱ 42,755,252.54*	*₱ 14,101,147.96*		*₱ 56,856,400.50*
Date of Payment	**Interest**	**Surcharge**	**Compromise Penalty**	**Total Amount Paid**
7/31/2013	₱ 326,926.66	₱ 4,972,012.87	₱ 50,000.00	₱ 5,348,939.53
7/31/2013	157,838.16			157,838.16
Subtotal	*₱ 484,764.82*	*₱ 4,972,012.87*	*₱ 50,000.00*	*₱ 5,506,777.69*
Total	**₱43,240,017.36**	**₱19,073,160.83**	**₱50,000.00**	**₱62,363,178.19**

[47] Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue, CTA EB No. 1078, (CTA Case No. 8049), July 27, 2015.
[48] Exhibits "P-21" to "P-22", docket, vol. 1, pp. 574 to 587 and Exhibits "P-23" to "P-24", docket, vol. 2, pp. 869 to 875.

Considering that the subject deficiency tax assessment is void, the entire amount of ₱62,363,178.19 paid by petitioner for the subject deficiency tax assessments constitutes erroneous or illegally collected tax, hence there is compliance with the first requisite.

As to the timeliness of the claim, both the administrative and the judicial claim must be filed within two (2) years from the date of payment of the tax or penalty.

In this case, petitioner paid in installments its FWT and VAT on April 2, 2012, on June 28, 2012, on June 29, 2012, and on July 31, 2012 in the total amount of ₱56,856,400.50. It also paid the aggregate amount ₱5,506,777.69 allegedly representing deficiency FWT and VAT surcharge, interest and compromise penalties for FY ended September 30, 2007, on July 31, 2013.

Basic is the rule that when the tax is paid in installments, the prescriptive period of two (2) years should be counted from the date of the final payment. This rule proceeds from the theory that, in contemplation of tax laws, there is no payment until the whole or entire tax liability is completely paid. Thus, a payment of a part or portion thereof, cannot operate to start the commencement of the statute of limitations. [49] Inasmuch as the payment was done by installment, the computation of the two-year prescriptive period should be from the date of the last installment. [50]

Applying the foregoing principle, petitioner's payment of its last installment for deficiency FWT and VAT and its payment of FWT and VAT surcharge, interest and compromise penalties were made on July 31, 2012 and on July 31, 2013, respectively. Counting two years from July 31, 2012 and July 31, 2013, petitioner had until July 31, 2014 and July 31, 2015 within which to file its administrative and judicial claims for refund.

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[49] Collector of Internal Revenue vs. Prieto, et al., G.R. No. L-11976, August 29, 1961.
[50] Commissioner of Internal Revenue vs. Palanca, Jr., G.R. No. L-16626, October 29, 1966; Commissioner of Internal Revenue vs. TMX Sales, Inc., et al., G.R. No. 83736, January 15, 1992.

In addition, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱62,363,178.19, representing erroneously or illegally collected deficiency final withholding tax and value-added tax.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

(With Separate Concurring Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

LINDE PHILIPPINES, INC. (formerly, CONSOLIDATED INDUSTRIAL GASES, INC.),
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE
Respondent.

CTA CASE NO. 8783

Members:
FABON-VICTORINO,
RINGPIS-LIBAN, *JJ.*

Promulgated:
MAR 2 8 2019
8:46 a.m.

x---x

SEPARATE CONCURRING OPINION

RINGPIS-LIBAN, *J.*:

I concur in the *ponencia* in granting the Petition for Review filed by Linde Philippines, Inc. (formerly, Consolidated Industrial Gases, Inc.) ("Petitioner") for lack of authority of the examining Revenue Officer ("RO"). However, I dissent with the *ponencia's* reason to do so.

I am of the firm belief that notwithstanding the absence of a new Letter of Authority ("LOA") issued in her favor, RO Melinda G. Lim may be given the authority to continue the audit and examination of Petitioner's books of accounts and other accounting records by way of a Revalidation Notice or Memorandum of Reassignment or any letter in this case, by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service, upon the transfer of Petitioner's case to the Large Taxpayers Service of the Bureau of Internal Revenue from Revenue District Office No. 43-Pasig City.

I submit that this could be validly done under the National Internal Revenue Code of 1997 ("NIRC of 1997"), as amended and the laws on agency under the Civil Code.

The power of the Commissioner of Internal Revenue ("CIR") to conduct assessments is granted to him by virtue of Section 6 of the NIRC of 1997, as amended:

> "SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.** –
>
> (A) *Examination of Returns and Determination of Tax Due.* – After a return has been filed as required under the provisions of this Code, **the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax**: *Provided, however,* That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer."[1]

Section 7 of the NIRC of 1997, as amended, likewise sets limits on which powers of the CIR may be delegated by him and which powers are to be exercised exclusively by him. The issuance of an LOA is not one of the non-delegable powers of the CIR, *viz:*

> "SEC. 7. **Authority of the Commissioner to Delegate Power.** – The Commissioner may delegate the powers vested in him under the pertinent provisions of this Code to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner: Provided, however, That the following powers of the Commissioner shall not be delegated:
>
> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate, under Sec. 204 (A) and (B) of this Code, any tax liability: Provided, however, That assessments issued by the regional offices involving basic deficiency taxes of Five hundred thousand pesos (P500,000) or less, and minor criminal violations, as may be determined by rules and regulations to be promulgated by the Secretary of finance, upon recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation

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[1] *Emphasis and underscoring supplied.*

board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, the heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept."

On the contrary, issuing LOAs is a delegable power which the CIR may devolve to Revenue Regional Directors, as expounded on in Section 10 of the NIRC of 1997, as amended:

"SEC. 10. **Revenue Regional Director.** – Under rules and regulations, policies and standards formulated by the Commissioner, with the approval of the Secretary of Finance, the Revenue Regional director shall, within the region and district offices under his jurisdiction, among others:

xxx

(c) **<u>Issue Letters of authority for the examination of taxpayers</u> within the region**;

xxx

(h) **Perform such other functions as may be provided by law and as may be delegated by the Commissioner.**"[2]

In fact, this is what happens in reality. The Regional Director is the one who issues and signs an LOA, and not the CIR. Case in point is LOA No. 200800010431[3] dated December 17, 20018 issued by Regional Director Alfredo V. Misajon, authorizing RO Charlie C. De Leon to examine the books of accounts and other accounting records of Petitioner for all internal revenue taxes for the period from October 01, 2006 to September 30, 2007.

An LOA is, in essence, a contract of agency. Article 1868 of the Civil Code defines agency as a contract where "a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."

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2 *Emphasis and underscoring supplied.*
3 Exhibit "R-1", BIR Records, p. 49.

In the case of *Spouses Fernando and Lourdes Viloria v. Continental Airlines, Inc.*[4], the Supreme Court had the occasion to expound on the elements of agency, to wit:

> "The elements of agency are: (1) consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for him/herself; and (4) the agent acts within the scope of his/her authority. **As the basis of agency is representation, there must be, on the part of the principal, an actual intention to appoint, an intention naturally inferable from the principal's words or actions. In the same manner, there must be an intention on the part of the agent to accept the appointment and act upon it.** Absent such mutual intent, there is generally no agency. It is likewise a settled rule that persons dealing with an assumed agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it."[5]

In an LOA, the CIR is the principal - as he is the one mandated by the law to make assessments - and the Regional Director, his agent.

Now, may the Regional Director, the CIR's agent, appoint a sub-agent, in this case, the RO named in the LOA? Article 1892 of the Civil Code says that he can. The said provision states:

> "Art. 1892. **The agent may appoint a substitute if the principal has not prohibited him from doing so**; but he shall be responsible for the acts of the substitute:
>
> (1) When he was not given the power to appoint one;
> (2) When he was given such power, but without designating the person, and the person appointed was notoriously incompetent or insolvent.
>
> All acts of the substitute appointed against the prohibition of the principal shall be void. (1721)"[6]

This power to appoint a sub-agent necessarily includes the power to revoke the same. Thus, the authority given to RO De Leon who was originally named in the LOA may be revoked, transferred and reassigned to RO Lim, for continuance of audit, when Petitioner's case was transferred to the Large

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[4] G.R. No. 188288, January 16, 2012.
[5] *Emphasis supplied.*
[6] *Emphasis supplied.*

Taxpayers Service of the Bureau of Internal Revenue from Revenue District Office No. 43-Pasig City.

Said document where such authority is transferred may be equivalent to an LOA. Several reasons support this. *First*, the only directive under Section 13 of the NIRC of 1997, as amended,[7] which requires that assessment be done by ROs pursuant to an LOA, is that the grant of authority be done ***in writing***. In fact, an "[a]gency may be oral, unless the law requires a specific form."[8]

Second, although the document may not be entitled "Letter of Authority" but otherwise, it can contain all the elements necessary to establish a contract of agency between the CIR and the new RO. The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties.[9] The title of the contract does not necessarily determine its true nature.[10] In fact, this Court has, time and again, declared certain documents emanating from the CIR as his "Final Decision" on a Disputed Assessment based on the tenor of the words therein despite the absence of the words "Final Decision" in the title of the document.

In interpreting what a "Letter of Authority" is, as mentioned in Section 13 of the NIRC of 1997, as amended, the laws on contracts and agency embodied in the Civil Code simply cannot be ignored. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[11] Similarly, every new statute should be construed in connection with those already existing and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation. *Interpretare et concordare leges legibus, est optimus interpretandi modus*, which means that the best method of interpretation is that which makes laws

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7 SEC. 13. Authority of a Revenue Officers. - subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, **pursuant to a Letter of Authority issued by the Revenue Regional Director**, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself." (*Emphasis supplied).*

8 Civil Code of the Philippines, Article 1869.

9 Heirs of Dr. Mario S. Intac and Angelina Mendoza Intac v. Court of Appeals and Spouses Marcelo Roy, Jr. and Josefina Mendoza-Roy and Spouses Dominador Lozada and Martina Mendoza-Lozada, G.R. No. 173211, October 11, 2012 *citing* Spouses Villaceran v. De Guzman, G.R. No. 169055, February 22, 2012; Ramos v. Heirs of Honorio Ramos, Sr., G.R. No. 140848, April 25, 2002, 381 SCRA 594, 601; Heirs of Policronio M. Ureta, Sr. vs. Heris of Liberato M. Ureta, G.R. Nos. 165748 & 165930, September 14, 2011 *citing* Lopez v. Lopez, G.R. No. 161925, November 25, 2009, 605 SCRA 358, 36.

10 Adelfa Properties, Inc. v. Court of Appeals, G.R. No. 111238, January 25, 1995.

11 Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, represented by Jose Mario Bunag, in his capacity as Commissioner of the Bureau of Internal Revenue, and John Doe and Jane Doe, who are persons acting for, in behalf or under the authority of Respondent, G.R. No. 215427, December 10, 2014, *citing* Lopez v. The Civil Service Commission, 273 Phil. 147, 152 (1991).

consistent with other laws. Tax laws do not exist in a vacuum, and must be appreciated and applied with other laws such as the Civil Code.[12]

I am not unaware of Revenue Memorandum Order ("RMO") No. 43-90[13] which states that "[a]ny re-assignment/transfer of cases to another RO(s)...shall require the issuance of a new L/A" However, I humbly stress and emphasize that an administrative issuance must conform, not contradict, the provisions of the enabling law. Any rule that is not consistent with the law is null and void.[14]

It is for the reasons above that, in my opinion, RO Lim who conducted the examination of Petitioner's records may be deemed authorized to do so without need for a new LOA, only if said letter or notice or memorandum was signed by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayers Service.

Under RMO No. 29-07[15], the equivalent of a Regional Director in the Large Taxpayers Service is the Assistant Commissioner/Head Revenue Executive Assistants, for they are the ones authorized to issue an LOA, to wit:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the <u>Assistant</u> <u>Commissioner/Head</u> <u>Revenue</u> <u>Executive</u> <u>Assistants</u>.**"[16]

In the instant case however, said memorandum[17] was only signed by OIC-Chief (of LT Audit and Investigation Division I) Conrado C. Lee. Therefore, RO Lim was without authority to continue the audit.

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[12] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 183517, June 22, 2010.
[13] Issued September 20, 1990.
[14] Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue, G.R. Nos. 175707, 180035 & 181092, November 19, 2014.
[15] Issued September 26, 2007.
[16] *Emphasis and underscoring supplied.*
[17] Exhibit "R-2", BIR Records, p. 47.

From all the foregoing, I vote for the **GRANT** of the Petition for Review filed by Petitioner.

Ma. Belen S-L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice